



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-1035]

RIN 1625-AA00

Special Local Regulation; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a recurring special local regulation for navigable waters of the Atlantic Ocean, east of Miami Beach, FL beginning at Government Cut Inlet, for the Miami Beach Air and Sea Show. This action is necessary to ensure the safety of the general public, spectators, vessels, and marine environment from potential hazards during aerobatic maneuvers by high-speed, low-flying airplanes and high speed vessels performing during the Miami Beach Air and Sea Show. This proposed rulemaking would prohibit persons and non-participant vessels from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the Federal eRulemaking Portal at

<http://www.regulations.gov> using docket number USCG-2017-1035 in the “Search” feature.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Mara J. Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The city of Miami Beach has informed the Coast Guard it will be hosting the Miami Beach Air and Sea Show annually over one weekend (Saturday and Sunday) during the month of May. The special local regulation proposed for this event would cover all navigable waters of the Atlantic Ocean east of Miami Beach, FL beginning at Government Cut Inlet and continuing north approximately two miles. The regulated area is intended to protect personnel, vessels, and the marine environment from potential hazards during aerobatic maneuvers by high speed, low flying airplanes and high speed vessels during the air show. Over the years, there have been unfortunate instances of aircraft mishaps during performances at various air shows

around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Miami has determined that a special local regulation is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

This rule would establish a special local regulation over the waters of the Atlantic Ocean east of Miami Beach, FL beginning at Government Cut Inlet and continuing north approximately two miles. The duration of the regulated area is intended to ensure the safety of the aerial flight demonstrations and high speed boat races. Non participant vessels or persons will not be permitted to enter the regulated area without obtaining permission from the Captain of the Port or a designated representative. The Coast Guard will provide a notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs

through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. Vessel traffic will be able to safely transit around the regulated area, which would impact a small designated area of the Atlantic Ocean. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you believe your business, organization, or governmental jurisdiction qualifies as a small entity and this rule would have a significant economic impact on it, please submit a

comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If you believe this rule would affect your small business, organization, or governmental jurisdiction and have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the air and sea show. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination will be available once we receive public comment for this rule and will be located in the docket indicated under ADDRESSES. We seek any

comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public

comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety; Navigation (water); Waterways; Reporting and Recordkeeping requirements. For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100 — SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 .U.S.C. 1233

2. Add § 100.725 to read as follows:

§ 100.725 Special Local Regulation: Miami Beach Air and Sea Show; Atlantic Ocean, Miami Beach, FL.

(a) **Location:** The following area is a regulated area located on the Atlantic Ocean in Miami Beach, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 25° 47'52"N, 080° 6'55"W; thence southwest to Point 2 in position 25° 45 '40"N, 080° 7' 16"W; thence northwest to Point 3 in position 25°45'50"N, 080°07' 49"W; thence north to Point 4 in position 25°47'56"N,080°07' 30"W; thence back to the origin at Point 1. These coordinates are based on North American Datum 1983. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting, anchoring in, or remaining within the regulated area.

(b) Definitions: (1) The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(2) The term “Patrol Commander” means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector Commander to enforce these regulations.

(3) The term “spectators” means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Regulations: (1) All non-participant vessels or persons are prohibited from entering, transiting, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or a designated representative.

(2) Persons and vessels desiring to enter, transit, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at (305) 535-4472 or a designated representative via VHF-FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will notify the public in advance of the event contained in these regulations by publishing a Notice of Enforcement in the Federal Register in advance of the date of the event. In addition, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM channel 16, or provide notice by on-scene designated representatives.

(d) Enforcement period: This rule will be enforced annually on a weekend (Saturday and Sunday) during the month of May.

Dated: January 16, 2018

M. M. Dean

Captain, U.S. Coast Guard

Captain of the Port Miami

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